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23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA

25 SAN FRANCISCO DIVISION

26 SONOS, INC.,

27 Plaintiff,

28 vs.

GOOGLE LLC,

Defendant.

Case No. 3:20-cv-06754-WHA

Related to Case No. 3:21-cv-07559-WHA

**GOOGLE'S OBJECTIONS TO THE
DRAFT FINAL CHARGE TO THE JURY
AND REVISED PROPOSED VERDICT
FORM**

1 Pursuant to the Court's directive during the initial charge conference, Google provides
2 advance notice of the following objections to the Draft Final Charge to the Jury and Revised
3 Proposed Verdict Form. Google may make additional objections and suggestions during the further
4 charge conference tomorrow.

5 **I. JURY INSTRUCTIONS**

6 **A. Instructions No. 27-34**

7 There is no direct infringement claim against Google with respect to the '966 patent. Google
8 does not make or sell a phone or tablet that has the Google Home app pre-installed on it. To the
9 extent there is direct infringement of the '966 patent, that infringement would occur if and when a
10 user downloads ("installs") the Google Home app onto a phone or tablet and then configures that
11 device to add at least three Google speakers. Accordingly, Google requests that Instruction Nos. 27
12 to 34 be modified to convey that Sonos claims that Google directly infringes the '885 patent and
13 only indirectly infringes the '966 patent.

14 **B. Instruction No. 37**

15 Because willfulness requires knowledge and intent, Google requests that the first sentence
16 of Instruction No. 37 be revised to include "and intent" as follows: "To determine whether Google
17 acted willfully, consider all facts and assess Google's knowledge and intent at the time of the
18 challenged conduct prior to the suit."

19 **C. Instruction No. 38**

20 Because the claims in Google's declaratory judgment complaint were directed to non-
21 infringement only, Google requests that "and was or was not valid" be removed from the sentence
22 at page 19 lines 13 to 16.

23 **D. Instruction No. 41**

24 Mr. Malackowski testified that his IFTTT analysis resulted in "a reasonable royalty per unit
25 for the '966 of 82 cents and a reasonable royalty per unit for the '885 of 87 cents." (Trial Tr.
26 1136:11-15.) After multiplying that rate by the "instances of accused infringement," he testified
27 that "the damages which this jury should award for [the '966] patent is \$77,546,923 for the period
28 of November 5th, 2019 through September 30th, 2022" and "for the '885 patent . . . [t]he total

1 damages would be \$12,246,294 for the period of November 24th, 2020 through November 15th,
 2 2022.” (*Id.* at 1136:19-1137:4.) To avoid jury confusion, Google requests that Instruction No. 41
 3 be modified to expressly instruct the jury to disregard these numbers, which are in the record solely
 4 because they are an output of Mr. Malackowski’s IFTTT theory.

5 **E. Instruction Nos. 46-47**

6 The requirement that a reasonable royalty “must reflect the value attributable to the
 7 infringing features of the product and no more”—as presented in Instruction No. 46—applies
 8 equally to running royalties and lump sum royalties. Accordingly, Google requests that current
 9 Instruction No. 47 (describing the lump sum form of royalty) be moved up to immediately follow
 10 current Instruction No. 45 (describing the per unit form of royalty), with current Instruction No. 46
 11 following those descriptions of the types of royalty. Google requests changing the first sentence of
 12 current Instruction No. 46 to read “Any royalty, whether per-unit or lump sum, must reflect the
 13 value... .”

14 **II. VERDICT FORM**

15 **A. Question No. 5**

16 Because the jury instructions explain the full scope of the knowledge and intent requirements
 17 for willfulness, Google proposes a streamlined willful infringement question as follows: “If any of
 18 the asserted claims of the ’966 patent is valid and infringed, has Sonos proven, by a preponderance
 19 of the evidence, that Google has infringed any of those claims willfully?” The phrasing of the
 20 current question could be read to mistakenly suggest that knowledge or willful blindness alone
 21 suffices to find willfulness.

22 DATED: May 18, 2023

QUINN EMANUEL URQUHART & SULLIVAN,
 LLP

23 By: /s/ Sean Pak
 24 Sean Pak

25 *Attorneys for GOOGLE LLC*
 26
 27
 28

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on May 18, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: May 18, 2023

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Sean Pak

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